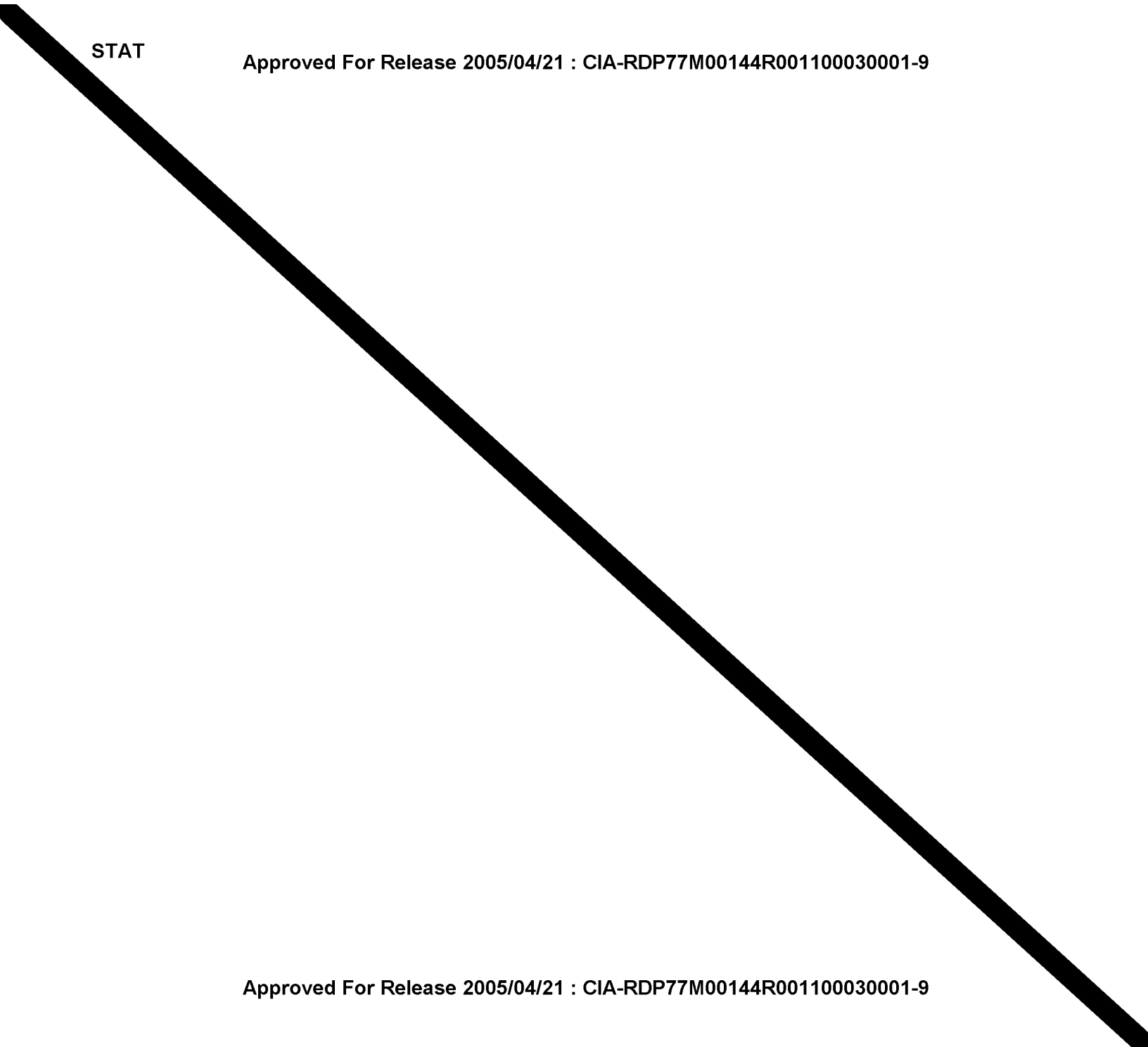

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our history, a comprehensive and uniform code of evidence.

There is a very real need for the codification of rules of evidence to govern the admissibility of proof in all trials before the Federal courts. This need arises from the lack of uniformity and clarity in the present law of evidence on the Federal level. Presently, the law of evidence is scattered throughout the cases, often with one circuit differing from another. In criminal cases and civil cases based on Federal question jurisdiction, the Federal courts now apply Federal statutes, rulings on evidence previously decided in suits in equity, or the general common law as interpreted by the Federal courts. In civil cases based on diversity of citizenship, the courts apply State rules of evidence contained in State statutes, and sometimes State decisional law, unless there is found to be an overriding Federal policy to the contrary. Consequently, the law of evidence varies from case to case, court to court, and circuit to circuit.

This lack of uniformity unduly complicates the practice of law, particularly in this age where the lawyer is more disposed to travel throughout the Nation to try cases. Uniform rules would also be of assistance to the judges who are assigned to districts or circuits other than their own to assist with congested calendars. In short, a uniform set of rules is necessary to eliminate the confusion that now exists as a result of the application of inconsistent and conflicting rules of evidence in our Federal courts.

But uniformity is not the only advantage of a code of evidence. Accessibility and clarity are also paramount features of a code. Case-by-case development of the law is not particularly apt for rules of evidence. Rulings on evidence, unlike most other legal rulings, must often be made quickly from the bench during the course of the questioning of a witness. We should arm our judges and lawyers with a handbook of rules that they can turn to quickly for guidance during the trial.

Mr. President, H.R. 5463 is intended to respond to these shortcomings of our present state of evidence law by providing a uniform, accessible and intelligible set of rules. The bill is the culmination of an enormous amount of hard work and careful thought spread over some 13 years by a large number of distinguished and concerned individuals. Indeed, H.R. 5463 represents an example of the best kind of legislative development by private and public bodies and individuals.

The groundwork for this bill began in 1961 when the Judicial Conference of the United States authorized the Honorable Earl Warren, then Chief Justice of the United States, to appoint an advisory committee to study the advisability and feasibility of uniform rules of evidence for use in the Federal courts. The Chief Justice appointed a special committee which concluded that uniform rules of evidence were advisable and feasible, and recommended that such rules should be promulgated promptly.

In 1965, a distinguished Advisory Committee composed of judges, lawyers and teachers was appointed and assigned the monumental task of developing a uniform code of evidence for use in the Federal courts. Approximately 4 years later in March 1969, the Judicial Conference's Standing Committee on Rules of Practice and Procedure printed and circulated widely for comment a preliminary draft of proposed rules of evidence which had been developed by the Advisory Committee.

After reviewing the numerous comments and suggestions, the Advisory Committee and, in turn, the Judicial Conference, approved a revised draft which it submitted to the Supreme Court in October 1970. The Supreme Court returned the draft for further public circulation and in October 1971, the final work product was forwarded to the Supreme Court.

The Court promulgated the rules pursuant to the various enabling acts and transmitted the proposed rules to the Congress. Under the enabling acts, the rules would have taken effect in 90 days. However, because of the general importance of these rules as well as serious questions which were raised with respect to certain rules on privileges in particular, the Congress enacted Public Law 93-12 to insure that Congress had a full opportunity to review them. This law deferred the effectiveness of the rules until expressly approved by Congress.

The Subcommittee on Criminal Justice of the House Judiciary Committee held 6 days of hearings on the proposed rules and after extensive consideration in executive session published a committee print of H.R. 5463 and circulated it widely to the bench and bar for consideration. After careful evaluation of these comments, the subcommittee revised the print and H.R. 5463 was approved by the full committee and subsequently passed by the House.

At the outset, it was evident that the members of the Senate Judiciary Committee viewed with general favor the efforts of the House, particularly Congressman HUNGATE'S subcommittee. Rather than returning to the rules as promulgated as a work basis for Senate action, the committee focused upon the bill as passed by the House so as to build logically upon the substantial efforts exerted there.

H.R. 5463, as reported by the Senate Judiciary Committee, do is indeed built upon these substantial efforts. In the House, more than 50 percent of the rules were left unchanged from those submitted by the Supreme Court. The members of the Senate Judiciary Committee found it necessary to make substantive changes to only 12 of the 62 rules embodied in H.R. 5463 as passed by the House. And of these 12 rules, the committee decided to reinstate six of the rules as proposed by the Supreme Court. I believe that these figures are a tribute to the fine work of the Judiciary Conference, the Supreme Court and Congressman HUNGATE'S subcommittee.

Mr. President, as should be evident from this brief history, the Federal Rules of Evidence as they reach the Senate have been subjected to the most careful scrutiny by many persons of differing philosophies and backgrounds. As a result of this effort, I believe that we have before us a bill that will improve the quality of our system of justice.

The rules of evidence bill, itself sets lofty goals. As stated in rule 102, the purpose of the rules is to "secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." H.R. 5463 will serve to promote each of these goals.

This package of rules cannot be characterized as either a liberal or conservative product. These rules defy attempts to label. Instead, what we have here are rules, each of which is designed to assist in reaching the objectives in every trial—truth and justice.

Mr. President, one of our most successful lawyers, Clarence Darrow, observed that laws should be like clothes—tailored to fit the people they are to serve. We have found, though, that our laws on evidence are ill-fitting. I urge my colleagues to support this bill so that we may have rules of evidence tailored to serve the public well as we search for truth and justice in our courts.

It is my hope that as we proceed, we can process the bill to an early conclusion, so that approval in this body can be submitted to a conference with the other body and final enactment can be achieved this calendar year, before adjournment sine die.

Mr. President, I yield the floor.

CONGRESSIONAL OVERSIGHT OF CONGRESSIONAL COMMITTEES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the measure having been cleared on both sides of the aisle, the Senate now proceed to the consideration of Calendar No. 1221.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3830) to help preserve the separation of powers and to further the constitutional prerogatives of Congress by providing for congressional review of executive agreements.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments on page 7, in line 10, strike out "specific"; and on page 7, in line 11, strike out "specific"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress declares that the Constitution of the United States established a system of shared powers between the legislative and executive branches of the United States Government in the making of international agreements; the powers of Congress have been substantially eroded by the use of so-called executive agreements, and the Senate is thereby prevented from performing its duties under section 2, article II, of the Constitution, which provides that the President "shall have power, by and with the advice and consent of the Senate, to make

treaties, provided two-thirds of the Senators present concur".

SECTION 1. (a) In furtherance of the provisions of the United States Constitution regarding the sharing of powers in the making of international agreements, any executive agreement made on or after the date of enactment of this Act shall be transmitted to the Secretary of State, who shall then transmit such agreement (bearing an identification number) to the Congress. However, any such agreement the immediate disclosure of which would, in the opinion of the President, be prejudicial to the security of the United States shall instead by transmitted by the Secretary to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate written injunction of secrecy to be removed only upon due notice from the President. Each committee shall personally notify the Members of its House that the Secretary has transmitted such an agreement with an injunction of secrecy, and such agreement shall thereafter be available for inspection only by such Members.

(b) Except as otherwise provided under subsection (d) of this section, any such executive agreement shall come into force with respect to the United States at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the executive agreement is transmitted to Congress or such committees, as the case may be, unless, between the date of transmittal and the end of the sixty-day period, both Houses agree to a concurrent resolution stating in substance that both Houses do not approve the executive agreement.

(c) For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(d) Under provisions contained in an executive agreement, the agreement may come into force at a time later than the date on which the agreement comes into force under subsections (b) and (c) of this section.

SEC. 2. For purposes of this Act, the term "executive agreement" means any bilateral or multilateral international agreement or commitment, other than a treaty, which is binding upon the United States, and which is made by the President or any officer, employee, or representative of the executive branch of the United States Government.

SEC. 3. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of concurrent resolutions described by subsection (b) of this section; and it supersedes other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(b) For the purposes of this section, "concurrent resolution" means only a concurrent resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the executive agreement numbered transmitted to (Congress) (the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives) by the President on , 19 .", the blank spaces therein being appropriately filled, and the appropriate words within one of the parenthetical phrases being used; but does not include a concurrent resolution which specifies more than one executive agreement.

(c) A concurrent resolution with respect to an executive agreement shall be referred to a committee (and all concurrent resolutions with respect to the same executive agreement shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives as the case may be.

(d) (1) If the committee to which a concurrent resolution with respect to an executive agreement has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the concurrent resolution or to discharge the committee from further consideration of any other concurrent resolution with respect to the executive agreement which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the concurrent resolution, is highly privileged (except that it may not be made after the committee has reported a concurrent resolution with respect to the same executive agreement), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other concurrent resolution with respect to the same executive agreement.

(e) (1) When the committee has reported, or has been discharged from further consideration of, a concurrent resolution with respect to an executive agreement, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on the concurrent resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(f) (1) Motions to postpone, made with respect to the discharge from committee, or the consideration of a concurrent resolution with respect to an agreement, and motions to proceed to the consideration of other business, shall be decided without debate.

(2) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a concurrent resolution with respect to an executive agreement shall be decided without debate.

SEC. 5. The provisions of section 1 of this Act shall not apply to any executive agreements entered into by the President pursuant to a provision of the Constitution or prior authority given the President by treaty or law.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1286), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF AMENDMENT

The purpose of the amendment, to strike the word "specific" in Section 4 of the bill, is to make clear that the bill would not deprive the President of any implied powers which he may have to make executive agreements.

PURPOSE

The purpose of this bill is to help to preserve the separation of powers and to further the constitutional prerogatives of Congress by providing for congressional review of executive agreements. Its provisions are simple. The bill recognizes that the concept of shared powers in the area of international agreements which the framers of the Constitution so carefully incorported in Article II, section 2 of the Constitution, has been substantially eroded by the use of so-called executive agreements. In plain and clearly understandable language, the measure defines executive agreements and requires that the Secretary of State shall transmit each such agreement to both Houses of Congress. It provides that any such agreement which, in the opinion of the President, would be prejudicial to the security of the United States, if disclosed, shall be transmitted to the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, under an appropriate injunction of secrecy. Under this injunction of secrecy, only the Members of both Houses of the Congress shall be permitted to inspect the document.

The bill further provides that each executive agreement transmitted to the Congress shall come into force and be made effective after 60 days, unless both Houses pass a concurrent resolution expressing disapproval of the executive agreement between the date it is transmitted to the Congress and the end of the 60-day period, or unless the terms of the agreement provide a later effective date. The bill defines "executive agreement" and further specifies the procedures to be followed when such agreements are transmitted to the Congress.

The Committee urges passage of S. 3830, which would go far toward enabling the Congress to exercise fully the "advice and consent" role in the making of treaties which the framers of the Constitution assigned it under Article II, section 2 of the Constitution.

LEGISLATIVE HISTORY

This legislation was first introduced by Senator Ervin, Chairman of the Senate Committee on the Judiciary's Subcommittee on Separation of Powers, on April 11, 1972. Hearings on the bill, S. 3475, of the 92d Congress, second session, were held by the subcommittee on April 24 and 25 and May 12, 18, and 19, 1972, and subsequently were published. Thereafter the bill was reintroduced in substantially identical form in the 93d Congress, first session, as S. 1472; and on July 13, 1973, the Subcommittee on Separation of Powers reported the measure to the Committee on the Judiciary without amendment.

On July 30, 1974, Senator Ervin introduced S. 3830 which was referred to the Committee on Foreign Relations. On August 19, 1974, the Committee on Foreign Relations discharged S. 3830 and referred it to the Committee on the Judiciary. S. 3830 is substantially identical to S. 1472 except for the addition of Section 4 and certain technical language changes. Section 4 would have exempted from the applicability of the procedures set out in Section 1 of S. 3830, any executive agreements entered into by the President pursuant to a provision of the Constitution or prior specific authority given the President by treaty or law.

COMMITTEE ACTION

The Committee on the Judiciary in executive session unanimously approved S. 3830 with an amendment by Senator Hugh Scott on October 2, 1974. The amendment, which was offered by Senator Scott struck the word "specific" from Section 4, line 10 and line 11 of the bill.

The word "specific" was removed from Section 4, line 10 and line 11 so that Section 4 would not be interpreted as depriving the President of any implied powers which he may have to make executive agreements.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at the hour of 10 o'clock tomorrow morning. After the two leaders or their designees have been recognized under the standing order, Mr. MANSFIELD will be recognized for not to exceed 15 minutes. There will then be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited, by unanimous consent, to 5 minutes each.

At the conclusion of routine morning business, the Senate will resume consideration of H.R. 5463, an act to establish rules of evidence for certain courts and proceedings.

Other measures which may be called up tomorrow, but not necessarily in the order stated, are S. 3639, a bill to provide for the development and implementation of programs for youth camp safety; and S. 2994, a bill to amend Public Health Service Act to assure the development of a national health policy and of effective State health regulatory programs and area health planning programs, and for other purposes.

The agenda for tomorrow is not necessarily confined to the aforementioned measures. Other measures on the calendar that have been cleared for action may be called up. Conference reports, being privileged matters, may be called up. Rollcall votes can be anticipated.

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 10 a.m. tomorrow.

The motion was agreed to; and at 5:34 p.m., the Senate adjourned until tomorrow, Friday, November 22, 1974, at 10 a.m.